

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10**

**ENGERT, LLC**

**Employer**

**and**

**Case 10-RC-294270**

**PLUMBERS AND PIPEFITTERS UA LOCAL 102**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

The Employer, Engert, LLC, is a mechanical contractor based in Knoxville, Tennessee. On April 19, 2022,<sup>1</sup> the Petitioner, Plumbers and Pipefitters UP Local 102, filed a representation petition with the National Labor Relations Board (the Board) under Section 9(c) of the National Labor Relations Act (the Act). Petitioner seeks to represent a unit of approximately 65 full-time and regular part-time pipefitters, welders, plumbers, HVAC service technicians, plumber service technicians, and plumber and pipefitter apprentices employed by the Employer out of its Knoxville, Tennessee, facility. The Employer maintains that the unit sought by Petitioner should also include approximately 27 sheet metal workers and a delivery driver/tool crib attendant.<sup>2</sup> Petitioner and the Employer agree that the unit should exclude office clerical employees, professional employees, managers, guards, and supervisors as defined by the Act.<sup>3</sup>

The Petitioner asserts that a manual ballot election is appropriate. While the Employer agrees that a manual ballot election could be safely conducted in accordance with the Office of the General Counsel issued Memorandum GC 20-10, “Suggested Manual Election Protocols,” it asserts that a mail ballot election is appropriate due to the scattered nature of the employees in the unit.

On May 9, a hearing officer of the Board held a hearing in this matter by videoconference, during which the parties were invited to present their positions and supporting

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<sup>1</sup> All dates herein are 2022 unless otherwise specified.

<sup>2</sup> Stuart Stubblefield maintains the tools in the fab shop and delivers tools and materials to the job sites. Although his job title is listed by the Employer as “Parts – Driver – Plumbing,” witnesses testified that he does not do plumbing work. I find that the evidence regarding this particular employee is insufficient to warrant his inclusion in the unit.

<sup>3</sup> In its position statement, the Employer asserted that the unit is a contracting one, and it would not effectuate the purposes of the Act to conduct an election in such a unit. At the hearing, counsel for the Employer said he would address this contention in its brief. Since the issue was not, in fact, raised, I will not address it further.

evidence. After the close of the record, the parties submitted post-hearing briefs that were duly considered.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. Based on the entire record in this proceeding and consistent with relevant Board law, I find that the unit sought by Petitioner is an appropriate unit and, for the reasons described more fully below, I am directing a mail ballot election in the petitioned-for unit.

### **THE EMPLOYER'S OPERATION**

The Employer is a commercial mechanical contractor that serves the greater Knoxville, Tennessee, area. It is hired by general contractors, usually through a competitive bidding process, to install plumbing and HVAC systems for new construction and renovation of commercial projects, including medical, industrial, and government facilities.

Jason Johnston is the company's vice president. His position involves maintaining and building relationships with customers and providing financial oversight and strategic planning. He also reviews each bid and determines final prices. He estimated that he places bids on new projects weekly. Reporting directly to Johnston are operations manager Dean Thomas and general manager Craig King. Thomas handles the operational side and is responsible for making sure work gets done, while King handles the administrative side, including financial backing for the projects. General superintendent Dusty Cooper reports directly to Thomas. Four project managers report to Cooper. These project managers are supervisors and oversee all four classifications of workers on each project. The Employer also employs about sixteen foremen. Record evidence established that these foremen do not possess supervisory authority as defined in Section 2(11) of the Act.

The Employer maintains its corporate office and a fabrication shop in Knoxville. Except for about eleven employees who work in the fab shop, workers report directly to their assigned job sites. Some of the projects, including the Oak Ridge National Laboratories (ORNL) project, are located as far as 50 miles from the Employer's office. At the time of the hearing in this matter, the Employer had about 14 active projects of varying sizes. Some projects may require as few as two or as many as 70 employees. Some of the current projects are expected to be completed within a few months, while others will last until late 2022 or early Spring 2023.

Witnesses for the Employer testified that they try to maintain a sufficient workload such that employees can move immediately to a new project when one is completed. However, if there is no new work available, some employees may be laid off. The Employer hires employees through various temp services and may then lay off those temporary employees so that permanent employees can fill the positions rather than being laid off.

Most of the Employer's projects require some employees from each of the three petitioned-for job classifications (plumbers, welder-fitters, and HVAC technicians) as well as sheet metal workers. They may not all be present at the same time, however, depending on the nature of the project. For example, with a new construction project, plumbers will begin the

work by laying underground pipes and, until the structure progresses, there is no work for HVAC technicians or sheet metal workers to perform.

The fabrication shop contains distinct areas for plumbing and sheet metal. The four sheet metal workers assigned to the “fab shop” fabricate duct work, pipe saddles, and hanger systems on the sheet metal side in a large, enclosed warehouse. The plumbing shop is a three-sided metal building in which plumbers prefabricate water supply lines, and welder-fitters weld pipe structures. Two plumbers, six welder-fitters, and one fitter helper are currently assigned to the fab shop. The Employer also has a service department that uses both plumbers and HVAC technicians.

### **EMPLOYEE CLASSIFICATIONS**

Plumbers install domestic water systems and sanitary waste and vent systems, as well as medical gas systems, which are run through a different type of pipe. They also install fixtures that connect to the piping systems such as toilets, sinks, faucets, and shower heads. They use hand and battery-powered tools such as pipe wrenches. Welder-fitters<sup>4</sup> fit, weld, and install steel pipe or HVAC piping systems, including chilled water, hot water, steam, and condenser lines. They use framing squares, laser levels, grinders, oxyacetylene torches, and cutting torches. HVAC technicians install and service HVAC systems and run the refrigeration piping attached to those systems. Sheet metal workers fabricate and install the ductwork that carries air throughout a building. They also install related items such as grilles, diffusers, registers, and vents. They use tin snips, metal cutters, and power shears. Record evidence shows that the materials that sheet metal workers work with are much lighter than the steel and other types of pipe that plumbers and welder-fitters use.

All work is assigned by trade, and one classification of employee does not have the training and qualification to perform the work of another classification. The Employer’s sixteen foremen are also designated by trade. For example, plumbing foremen only oversee plumbers, and sheet metal foremen oversee sheet metal workers. Foremen code time for work performed using codes designated for a particular trade. For example, plumbing work has different codes than sheet metal work.

Plumbing, Heating and Cooling Contractors (PHCC) is an organization that administers a four-year apprenticeship program for plumbers, HVAC technicians, and sheet metal mechanics. Employers pay the cost of the program for their employees while the employees work as apprentices and attend classes. Apparently, there is no such apprenticeship program for welders, and no record evidence regarding how they are trained. The first month or so of all programs

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<sup>4</sup> It appears from the record that most employees in the welding and fitting classification perform both of those duties. The list submitted by the Employer in its Statement of Position shows that thirteen employees are classified as Welder-Fitter while four employees are classified as only Welder. No employees are designated as a Fitter only except Fitter-Laborer Benjamin Yoakum, who works in the fab shop.

involves on-the-job safety and may contain some common content over the three programs. After that, the programs are tailored specifically to each trade.

## BOARD LAW

A petitioner is not required to seek a bargaining unit that is the only appropriate unit or even the most appropriate unit. The Act merely requires that the unit sought by Petitioner be *an* appropriate unit. *Wheeling Island Gaming*, 355 NLRB 637, fn. 2 (2010), citing *Overnite Transp. Co.*, 322 NLRB 723 (1996); *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988). “The Board’s inquiry necessarily begins with the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends.” *The Boeing Company*, 368 NLRB No. 67, slip op. at 3 (2019).

In *PCC Structural, Inc.*, 365 NLRB No. 160 (2017), the Board returned to the traditional community-of-interest standards for determining whether a unit is appropriate. There, the Board specifically found that the traditional community-of-interest test is the “correct standard for determining whether a proposed bargaining unit constitutes an appropriate unit for collective bargaining when the employer contends that the smallest appropriate unit must include additional employees.” *Id.*, slip op. at 1. In each case, the Board is required to determine:

whether the employees are organized into separate departments; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer’s other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised.

*Id.*, slip op. at 11, citing *United Operations, Inc.*, 338 NLRB 123, 123 (2002). The Board must analyze “whether employees in the proposed unit share a community of interest *sufficiently distinct* from the interests of employees excluded from the unit to warrant a separate bargaining unit.” *Id.* (emphasis in original). The purpose of the inquiry is to ensure, among other things,

that bargaining units will not be arbitrary, irrational, or “fractured”-- that is, composed of a gerrymandered grouping of employees whose interests are insufficiently distinct from those of other employees to constitute that grouping a separate appropriate unit.

*PCC Structural, supra*, slip op. at 5.

The Board has clarified that the traditional community-of-interest test, as articulated in *PCC Structural*, involves a three-step analysis.

First, the proposed unit must share an internal community of interest. Second, the interests of those within the proposed unit and the shared and distinct interests of those excluded from that unit must be comparatively analyzed and weighed. Third,

consideration must be given to the Board's decisions on appropriate units in the particular industry involved.

*The Boeing Company*, supra, slip op. at 3. With respect to the first step, "the traditional community-of-interest standard is not satisfied if the interests shared by the petitioned-for employees are too disparate to form a community of interest within the petitioned-for unit." *Id.*, citing *Saks & Co.*, 204 NLRB 24, 25 (1973); *Publix Super Markets, Inc.*, 343 NLRB 1023, 1027 (2004). In step two of the analysis, "the Board must determine whether the employees excluded from the unit 'have meaningfully distinct interests in the context of collective-bargaining that *outweigh* similarities with unit members.'" *Boeing*, slip op. at 4, quoting *PCC Structural*, slip op. at 11. "[W]hat is required is that the Board analyze the distinct and similar interests and explain why, taken as a whole, they do or do not support the appropriateness of the unit." *Id.*

## **APPLICATION OF BOARD LAW TO THE FACTS OF THIS CASE**

### ***Organization of the Plant***

An important consideration in any unit determination is whether the proposed unit conforms to an administrative function or grouping of an employer's operation. Thus, for example, generally the Board would not approve a unit consisting of some, but not all, of an employer's production and maintenance employees. See, *Check Printers, Inc.* 205 NLRB 33 (1973). However, in certain circumstances the Board will approve a unit in spite of the fact that other employees in the same administrative grouping are excluded. *Home Depot USA*, 331 NLRB 1289, 1289 and 1291 (2000).

In this case, the unit sought by Petitioner includes some but not all of the Employer's trade classifications. However, as discussed below, that factor alone would not warrant a finding that the unit sought by Petitioner is not an appropriate one.

### ***Interchangeability and Contact among Employees***

Interchangeability refers to temporary work assignments or transfers between two groups of employees. Frequent interchange "may suggest blurred departmental lines and a truly fluid work force with roughly comparable skills." *Hilton Hotel Corp.*, 287 NLRB 359, 360 (1987). As a result, the Board has held that the frequency of employee interchange is a critical factor in determining whether employees who work in different groups share a community of interest sufficient to justify their inclusion in a single bargaining unit. *Executive Resource Associates*, 301 NLRB 400, 401 (1991), citing *Spring City Knitting Co. v. NLRB*, 647 F.2d 1011, 1015 (9th Cir. 1081). In this case, there is no interchange at all between the employees Petitioner seeks to represent (plumbers, welder-fitters, and HVAC techs) and the employees the Employer seeks to include. Rather the record is replete with evidence that one trade cannot and does not perform the work of any other trade. The only record evidence that members of the petitioned-for unit worked with sheet metal workers was when a particularly large and heavy piece of equipment was delivered to a job site. Employees from several classifications helped to lift it and get it into

place. This action, however, required only non-specialized manpower rather than any classification's special skills.

Also relevant for consideration with regard to interchangeability is whether there are permanent transfers among employees in the unit sought by a union. However, the existence of permanent transfers is not as important as evidence of temporary interchange. *Hilton Hotel Corp*, supra. In this matter, the record reveals no evidence of permanent transfers between the employees in the petitioned-for unit and the employees the Employer seeks to exclude.

Pertinent also is the amount of work-related contact among employees, including whether they work beside one another. Thus, it is important to compare the amount of contact employees in the unit have with one another. See for example, *Casino Aztar*, 349 NLRB 603, 605-606 (2007). While at the job sites, employees in the petitioned-for unit interact with the sheet metal workers only when they need to coordinate the timing and locations of their respective work to ensure that they stay out of each other's way. In the fab shops, sheet metal workers have their own work area and rarely, if ever, interact with the plumbers and welder-fitters.

### ***Common Supervision***

Another community-of-interest factor is whether the employees in dispute are commonly supervised. In examining supervision, most important is the identity of employees' supervisors who have the authority to hire, to fire or to discipline employees (or effectively recommend those actions) or to supervise the day-to-day work of employees, including rating performance, directing and assigning work, scheduling work and providing guidance on a day-to-day basis. *Executive Resources Associates*, supra at 402; *NCR Corporation*, 236 NLRB 215 (1978). Common supervision weighs in favor of placing the employees in dispute in one unit. However, the fact that two groups are commonly supervised does not mandate that they be included in the same unit, particularly where there is no evidence of interchange, contact, or functional integration. *United Operations*, supra at 125. Similarly, the fact that two groups of employees are separately supervised weighs in favor of finding against their inclusion in the same unit. However, separate supervision does not mandate separate units. *Casino Aztar*, supra at 607, fn. 11. Rather, more important is the degree of interchange, contact and functional integration. *Id.* at 607.

In this case, the record reveals that plumbers, welder-fitters, and HVAC workers are overseen by non-supervisory plumbing foremen, and sheet metal workers are overseen by non-supervisory sheet metal foremen.<sup>5</sup> General superintendent Dusty Cooper and the project managers supervise employees in all four classifications.

### ***The Nature of Employee Skills and Functions***

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<sup>5</sup> Though informally called "foremen," these employees are formally classified using job titles included in the unit description.

This factor examines whether disputed employees can be distinguished from one another on the basis of job functions, duties, or skills. If they cannot be distinguished, this factor weighs in favor of including the disputed employees in one unit. Evidence that employees perform the same basic function or have the same duties, that there is a high degree of overlap in job functions or of performing one another's work, or that disputed employees work together as a crew, support a finding of similarity of functions. Evidence that disputed employees have similar requirements to obtain employment; that they have similar job descriptions or licensure requirements; that they participate in the same Employer training programs; and/or that they use similar equipment supports a finding of similarity of skills. *Casino Aztar*, 349 NLRB 603 (2007); *J.C. Penny Company, Inc.*, 328 NLRB 766 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenician*, 308 NLRB 826 (1992). Where there is also evidence of similar terms and conditions of employment and some functional integration, evidence of similar skills and functions can lead to a conclusion that disputed employees must be in the same unit, in spite of lack of common supervision or evidence of interchange. *Phoenician*, supra.

The record in this case reveals that employees in all four classifications have very different skills and training and work with very different types of tools and materials. While employees from all four classifications may be present on a particular job site at the same time, they are working on completely different systems and installations.

### ***Degree of Functional Integration***

Functional integration refers to when employees' work constitutes integral elements of an employer's production process or business. Thus, for example, functional integration exists when employees in a unit sought by a union work on different phases of the same product or as a group provides a service. Another example of functional integration is when the Employer's workflow involves all employees in a unit sought by a union. Evidence that employees work together on the same matters, have frequent contact with one another, and perform similar functions is relevant when examining whether functional integration exists. *Transerv Systems*, 311 NLRB 766 (1993). On the other hand, if functional integration does not result in contact among employees in the unit sought by a union, the existence of functional integration has less weight.

In this matter the record reveals that, although employees are working on different areas of a particular project, all four classifications are generally needed at some point during the project for it to be completed.

### ***Terms and Conditions of Employment***

Terms and conditions of employment include whether employees receive similar wage ranges and are paid in a similar fashion (for example hourly); whether employees have the same fringe benefits; and whether employees are subject to the same work rules, disciplinary policies and other terms of employment that might be described in an employee handbook. However, the facts that employees share common wage ranges and benefits or are subject to common work rules does not warrant a conclusion that a community of interest exists where employees are

separately supervised, do not interchange and/or work in a physically separate area. *Bradley Steel, Inc.*, 342 NLRB 215 (2004); *Overnite Transportation Company*, 322 NLRB 347 (1996). Similarly, sharing a common personnel system for hiring, background checks and training, as well as the same package of benefits, does not warrant a conclusion that a community of interest exists where two classifications of employees have little else in common. *American Security Corporation*, 221 NLRB 1145 (1996).

In the instant case the record reveals that employees who the Employer argues must be included in the unit share common terms and conditions of employment with employees in the petitioned-for unit. These include hours of work, weekly pay day, work rules, disciplinary policies, and benefits options. On the other hand, while Petitioner subpoenaed detailed wage information for all job classifications, the Employer only provided the pay range for each. The Petitioner asked that an adverse inference be drawn from the Employer's failure to provide more specific evidence. I note that sheet metal workers have the highest starting rate of \$17 per hour, as opposed to \$14 per hour for plumbers, \$13.39 per hour for welder-fitters, and \$16.48 for HVAC techs.

### **APPROPRIATE UNIT**

In determining that the unit sought by Petitioner is appropriate, I have carefully weighed the community-of-interest factors cited in *United Operations*, supra. I conclude that the unit sought by Petitioner is appropriate. The record reveals that employees in the petitioned-for unit are part of the same organization structure and share common supervision. The petitioned-for unit employees have similar terms and conditions of employment and are functionally integrated with the sheet metal workers that the Employer wishes to include. However, the distinct nature of their skills and functions and the lack of any interchange or meaningful contact between the petitioned-for unit and the sheet metal workers does not support the inclusion of sheet metal workers in the unit. As a result, I conclude that the following unit is an appropriate one:

All full-time and regular part-time pipefitters, welders, plumbers, HVAC service technicians, plumber service technicians, and plumber and pipefitter apprentices employed by the Employer out of its Knoxville, Tennessee, facility, but excluding all sheet metal workers, office clerical employees, professional employees, managers, guards and supervisors as defined in the Act.

### **METHOD OF ELECTION**

Whether an election is to be conducted by mail, manually, or by some other method is an administrative matter to be determined by the Regional Director. *National Van Lines*, 120 NLRB 1343 (1958). Traditionally, most Board elections are conducted by manual voting and there is a presumption in favor of conducting elections in this manner. See *NLRB Casehandling Manual, Part Two, Representation Proceedings*, Section 11301.2. However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. The Board has stated that at least three situations



“normally suggest the propriety of using mail ballots”: (1) where eligible voters are “scattered” over a wide geographic area due to their job duties; (2) where they are “scattered” in that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, lockout or picketing in progress. *San Diego Gas & Electric*, 325 NLRB 1143, 1145 (1998); see also *Willamette Industries*, 322 NLRB 856 (1997); *London’s Farm Dairy, Inc.*, 323 NLRB 1057 (1997); *Reynolds Wheels International*, 323 NLRB 1062 (1997); *Casehandling Manual* Sec. 11301.2.

As noted herein, with the exception of the seven plumbers and welder-fitters who work in the fab shop, all unit employees report directly to the job sites. The Employer’s largest job at the moment appears to be the ORNL. At the time of the hearing in this matter, the ORNL project employed around 35 workers including 8 plumbers, 8 to 12 pipefitters, and an unknown number of HVAC technicians. That project is located about 50 miles from the Employer’s corporate office. It is also a federal facility that requires special access credentials. Record evidence showed that, although the Employer recently conducted a meeting of employees in Knoxville, only about half of its employees attended. I find that the Employer’s employees meet the first two situations set forth in *San Diego Gas* because they are (1) scattered over a wide geographic area and (2) they are not present at a common location at common times. Therefore, I find that a mail ballot election is appropriate.

## CONCLUSION

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is a Delaware limited liability company which provides plumbing, HVAC and mechanical project fabrication, installation, and services. During the preceding 12 months, a representative period, the Employer has provided services valued in excess of \$50,000 to customers in the state of Tennessee and purchased and received goods valued in excess of \$50,000 from outside the state of Tennessee. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time pipefitters, welders, plumbers, HVAC service technicians, plumber service technicians, and plumber and pipefitter apprentices employed by the Employer out of its Knoxville, Tennessee, facility, but excluding all sheet metal workers, office clerical employees, professional employees, managers, guards and supervisors as defined in the Act.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Plumbers and Pipefitters UA Local 102.

### **A. Election Details**

I have determined that a mail ballot election will be held due to the scattered nature of employees in the bargaining unit.

The ballots will be mailed to employees employed in the appropriate collective bargaining unit. At 2:00 p.m. on **Friday, June 24, 2022**, ballots will be mailed to voters from an office of the National Labor Relations Board, Region 10. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Friday, July 1, 2022, should communicate immediately with the National Labor Relations Board by either calling the Region 10 Office at (404) 331-2896 or (615) 736-5921, or our national toll-free line at 1-844-762-NLRB (1-844-762-6572).

All ballots will be commingled and counted at the Region 10 Nashville Resident Office (located at 810 Broadway, Suite 302, Nashville, Tennessee 37203-3859) on **Monday, July 25, 2022**, at 2:00 p.m. (Central). In order to be valid and counted, the returned ballots must be received in the Nashville Resident Office prior to the counting of the ballots.

### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending **Saturday, June 4, 2022**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the voting unit who either (1) were employed a total of 30 working days or more within the 12 months preceding the election eligibility date or (2) had some employment in the 12 months preceding the election eligibility date and were employed 45 working days or more within the 24

months immediately preceding the election eligibility date.<sup>6</sup> However, employees meeting either of those criteria who were terminated for cause or who quit voluntarily prior to the completion of the last job for which they were employed, are not eligible. In a mail ballot election, employees are eligible to vote if they are in the unit on both the payroll period ending date and on the date they mail in their ballots to the Board's designated office.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period, and, in a mail ballot election, before they mail in their ballots to the Board's designated office; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Friday, June 10, 2022**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

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<sup>6</sup> The *Daniel/Steiny* eligibility formula. *Daniel Construction Co.*, 133 NLRB 264 (1967); *Steiny & Co., Inc.*, 308 NLRB 1323 (1992).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request

for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: June 8, 2022



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